

APPEAL NO. 030806  
FILED MAY 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 11, 2003. The hearing officer determined that the respondent (carrier) did not waive the right to contest compensability of the claimed injury, and that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, or have disability. The claimant appeals this decision and argues that he did not receive adequate representation at the hearing. Additionally, the claimant attaches new evidence to his appeal, which was not offered at the hearing. The appeal file contains no response from the respondent (carrier).

DECISION

Affirmed.

We first address the claimant's contention that he did not receive adequate representation at the CCH. In Texas Workers' Compensation Commission Appeal No. 941271, decided October 31, 1994, the Appeals Panel stated that as a general matter it did not normally review competency of a properly licensed attorney or that attorney's trial tactics, that there are other forums for determining questions of that nature, and the fact that a claimant was not successful in the prosecution of his claim does not warrant the Appeals Panel's reexamination of the attorney's tactics or judgment in presenting the case. Therefore, we will not review the competency of the attorney who represented the claimant at the hearing.

Attached to the claimant's request for review is a witness statement, which was not offered into evidence at the hearing. In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that is offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the statement that the claimant attached to his request for review and we decline to consider it on appeal.

The disputed issues in this case involved factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the

evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The true corporate name of the insurance carrier is **LUMBERMEN'S MUTUAL CASUALTY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge